

(c) If fewer than all joint inventors are applying for a patent as provided in § 1.45, the phrase “the applicant” means the joint inventors who are applying for the patent without the omitted inventor(s).

(d) Any person having authority may deliver an application and fees to the Office on behalf of the applicant. However, an oath or declaration, or substitute statement in lieu of an oath or declaration, may be executed only in accordance with § 1.63 or 1.64, a correspondence address may be provided only in accordance with § 1.33(a), and amendments and other papers must be signed in accordance with § 1.33(b).

(e) The Office may require additional information where there is a question concerning ownership or interest in an application, and a showing may be required from the person filing the application that the filing was authorized where such authorization comes into question.

[77 FR 48815, Aug. 14, 2012]

§ 1.43 Application for patent by a legal representative of a deceased or legally incapacitated inventor.

If an inventor is deceased or under legal incapacity, the legal representative of the inventor may make an application for patent on behalf of the inventor. If an inventor dies during the time intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention. *See* § 1.64 concerning the execution of a substitute statement by a legal representative in lieu of an oath or declaration.

[77 FR 48815, Aug. 14, 2012]

§ 1.44 [Reserved]

§ 1.45 Application for patent by joint inventors.

(a) Joint inventors must apply for a patent jointly, and each must make an inventor’s oath or declaration as required by § 1.63, except as provided for in § 1.64. If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the other joint inventor or inventors may make the application for patent on behalf of themselves and

the omitted inventor. *See* § 1.64 concerning the execution of a substitute statement by the other joint inventor or inventors in lieu of an oath or declaration.

(b) Inventors may apply for a patent jointly even though:

(1) They did not physically work together or at the same time;

(2) Each inventor did not make the same type or amount of contribution; or

(3) Each inventor did not make a contribution to the subject matter of every claim of the application.

(c) If multiple inventors are named in a nonprovisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter of at least one claim of the application and the application will be considered to be a joint application under 35 U.S.C. 116. If multiple inventors are named in a provisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter disclosed in the provisional application and the provisional application will be considered to be a joint application under 35 U.S.C. 116.

[77 FR 48815, Aug. 14, 2012]

§ 1.46 Application for patent by an assignee, obligated assignee, or a person who otherwise shows sufficient proprietary interest in the matter.

(a) A person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. A person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties.

(b) If an application under 35 U.S.C. 111 is made by a person other than the inventor under paragraph (a) of this section, the application must contain an application data sheet under § 1.76 specifying in the applicant information section (§ 1.76(b)(7)) the assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter. If the

§ 1.47

application is the national stage of an international application, the person who is identified in the international stage as an applicant for the United States is the person specified as the original applicant for the national stage.

(1) If the applicant is the assignee or a person to whom the inventor is under an obligation to assign the invention, documentary evidence of ownership (*e.g.*, assignment for an assignee, employment agreement for a person to whom the inventor is under an obligation to assign the invention) should be recorded as provided for in part 3 of this chapter no later than the date the issue fee is paid in the application.

(2) If the applicant is a person who otherwise shows sufficient proprietary interest in the matter, such applicant must submit a petition including:

- (i) The fee set forth in § 1.17(g);
- (ii) A showing that such person has sufficient proprietary interest in the matter; and
- (iii) A statement that making the application for patent by a person who otherwise shows sufficient proprietary interest in the matter on behalf of and as agent for the inventor is appropriate to preserve the rights of the parties.

(c) Any request to correct or update the name of the applicant after an applicant has been specified under paragraph (b) of this section must include an application data sheet under § 1.76 specifying the correct or updated name of the applicant in the applicant information section (§ 1.76(b)(7)). Any request to change the applicant after an original applicant has been specified under paragraph (b) of this section must include an application data sheet under § 1.76 specifying the applicant in the applicant information section (§ 1.76(b)(7)) and comply with §§ 3.71 and 3.73 of this title.

(d) Even if the whole or a part interest in the invention or in the patent to be issued is assigned or obligated to be assigned, an oath or declaration must be executed by the actual inventor or each actual joint inventor, except as provided for in § 1.64. *See* § 1.64 concerning the execution of a substitute statement by an assignee, person to whom the inventor is under an obligation to assign the invention, or a per-

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son who otherwise shows sufficient proprietary interest in the matter.

(e) If a patent is granted on an application filed under this section by a person other than the inventor, the patent shall be granted to the real party in interest. Otherwise, the patent may be issued to the assignee or jointly to the inventor and the assignee as provided in § 3.81. Where a real party in interest has filed an application under § 1.46, the applicant shall notify the Office of any change in the real party in interest no later than payment of the issue fee. The Office will treat the absence of such a notice as an indication that there has been no change in the real party in interest.

(f) The Office may publish notice of the filing of the application by a person who otherwise shows sufficient proprietary interest in the *Official Gazette*.

[77 FR 48815, Aug. 14, 2012]

§ 1.47 [Reserved]

§ 1.48 Correction of inventorship pursuant to 35 U.S.C. 116 or correction of the name or order of names in a patent application, other than a re-issue application.

(a) *Nonprovisional application:* Any request to correct or change the inventorship once the inventorship has been established under § 1.41 must include:

(1) An application data sheet in accordance with § 1.76 that identifies each inventor by his or her legal name; and

(2) The processing fee set forth in § 1.17(i).

(b) *Inventor's oath or declaration for added inventor:* An oath or declaration as required by § 1.63, or a substitute statement in compliance with § 1.64, will be required for any actual inventor who has not yet executed such an oath or declaration.

(c) Any request to correct or change the inventorship under paragraph (a) of this section filed after the Office action on the merits has been given or mailed in the application must also be accompanied by the fee set forth in § 1.17(d), unless the request is accompanied by a statement that the request to correct or change the inventorship is due solely to the cancelation of claims in the application.